IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2414 of 2000 to 2426 of 2000

with

CROSS OBJECTIONS No.8 of 2001 to 20 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

SPECIAL LAND ACQUISITION OFFICER

Versus

SHANTIBHAI SHANKARBHAI PATEL

Appearance:

MR MUKESH PATEL AGP for Appellants

MR KM SHETH for Respondents and Cross Objectors

CORAM : MR.JUSTICE M.R.CALLA
and

MR.JUSTICE D.H.WAGHELA

Date of decision: 29/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. This group of 13 First Appeals and 13 Cross-Objections filed by the claimants are directed against the common judgment and order dated 30.10.1999 passed by the Joint District Judge of Panchmahals at Godhra in Land Acquisition Reference Cases No.1 to 10 of 1993 and 12 to 14 of 1993 and, therefore, we propose to decide all these First Appeals and the Cross-Objections filed therein by this common judgment and order as under.

2. The First Appeals filed by the State were admitted on 13.2.2001. Mr.K.M.Sheth had appeared on that day on behalf of the respondent-claimants and had waived service. The respondent-claimants thereafter filed the Cross-Objections on 13.3.2001. The same were admitted on 28.3.2001 and service was waived in the Cross-Objections by Mr.Mukesh Patel, learned AGP and the Cross-Objections were directed to be heard along with the appeals. This is how all the First Appeals and the Cross-Objections have come up before us for hearing today.

3. The lands of village Halol were sought to be acquired for the Halol Diversion on the National Highway and for that purpose the notification under Sec.4 of the Land Acquisition Act, 1894 was issued on 1.12.1989 and the notification under Sec.6 was issued on 20.6.1990. The Land Acquisition Officer passed the award on 11.6.1992 determining the rate of compensation as Rs.3.20 per sq. mtr. The claimants were not satisfied with the award, they claimed Rs.100/- per sq. mtr. and, therefore, the claimants took the matter for Reference under Sec.18. The Reference Court granted additional compensation of Rs.45/- per sq. mtr. and has determined the total rate of compensation as Rs.48.20 per sq. mtr. The Reference Court has placed reliance on the previous award whereby the Land Acquisition Reference Cases No.25/89, 91/96 and 92/96 had been decided by the Reference Court on 13.8.1998. In that case, the Reference Court had determined the rate of compensation as Rs.40/- per sq. mtr. in all, i.e. after granting additional compensation of Rs.34.50 per sq. mtr. In that case, the notification under Sec.4 had been issued on 21.8.1980. This judgment, which was exhibited as Exh.21 before the Reference Court, was subjected to appeal before this Court in the group of First Appeals

No.6060 to 6062 of 1999 and the appeals were dismissed on 12.12.2000 and the High Court found that the appreciation of evidence and the conclusion drawn therefrom in the findings of fact recorded by the Reference Court were eminently justified and did not call for any interference in the appeals. In other words, the rate of compensation of Rs.40/- per sq. mtr. was confirmed by the High Court. The learned A.G.P. Mr.Mukesh Patel has submitted that no analogy could be drawn for deciding the present References on the basis of the Reference Order at Exh.21 and, according to him, the lands in question which have been acquired in the present case are not comparable with the lands which have been acquired in the case of Exh.21 in which the High Court had confirmed the rate of compensation as Rs.40/- per sq. mtr., because the size of the lands which were acquired in the earlier case was admeasuring 32,072 sq. mtrs. whereas the size of the lands acquired in the present case comes to 27,324 sq. mtrs. and that the lands in the present cases are not as developed as the lands which were acquired for which the previous order at Exh.21 was passed. As against this, Mr.Sheth appearing on behalf of the Cross-Objectors has submitted that the lands in both the cases belong to the same village Halol and are within a distance of 1000 feet only and the lands which have been acquired in the present case are in the heart of village Halol and further submitted that there is no significant difference in the size of the two plots of lands as is obvious from the figure of 32,072 sq. mtrs. and 27,324 sq. mtrs. It is submitted that in the case where notification under Sec.4 was issued way back on 21.8.1980, the High Court confirmed the rate at Rs.40/- per sq. mtr. and, therefore, even if 10% increase is granted per annum in this case where the notification under Sec.4 was issued on 1.12.1984, the rate should have been determined at least at Rs.76/- per sq. mtr. As there is a difference of nine years and even if 10% increase is granted on the basis of Rs.40/- per sq. mtr., it would come to 9 x 4 = + 36/- over and above Rs.40/- making the total rate of Rs.76/- per sq. mtr. For grant of 10% increase per annum, he has placed reliance on the decision of this Court in the case of SPECIAL LAND ACQUISITION OFFICER v. MOTIBHAI MOHANBHAI reported in 1997 (2) G.L.H. 773.

4. We have heard the learned counsel on behalf of the appellants as well as the cross-objectors. In fact, we find that filing of the appeals by the State has invited the claimants to file the cross-objections in these matters. There is no dispute that the lands in the present case and the lands which were concerned in the cases of Exh.21 belong to the same village Halol and in

the facts of the present case, on the basis of the material available on record, it cannot be said that the lands are not comparable. The difference of 5000 sq. mtrs. in the area of the two lands, i.e. 32,072 sq. mtrs. and 27,324 sq. mtrs. is of no significance. The distance between the two lands is also only about 1.5 kms. from the State Transport Bus Stand whereas the actual distance between the two lands is hardly 1000 ft. The lands concerned in both the cases are agricultural lands and, therefore, we find that the case of the present claimants for the purpose of determining the rate of compensation is fully covered on the basis of the rates which were decided by the Reference Court in Exh.21 in which the rate of compensation was determined at Rs.40/- per sq. mtr. in the case where notification under Sec.4 was issued in 1980. This rate of Rs.40/- per sq. mtr. had been determined after taking note of the admissions made by the witness and the High Court had confirmed this rate of Rs.40/- per sq. mtr. in the previous First Appeals No.6060 to 6062 of 1999. On that basis, the land owners were right in claiming 10% increase per annum and, accordingly, the rate should have been determined at Rs.40/- + Rs.36/- = Rs.76/- per sq. mtr.

5. In view of the discussions as aforesaid, the appeals filed by the State fail and the cross-objections succeed to the extent that the claimants are entitled to be paid the compensation @ Rs.76/- per sq. mtr. instead of Rs.40/- per sq. mtr. and, to that extent, the cross-objections are allowed. All these 13 appeals are

hereby dismissed and the cross-objections are allowed accordingly. All legal consequences shall follow with regard to all other items under consideration. Decree be drawn accordingly.

Sd/-

(M.R.Calla, J.)

Sd/-

29.3.2001 (D.H.Waghela, J.)

(KMG Thilake)